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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF WASHINGTON

14 STATE OF WASHINGTON, et al.,
15 Plaintiffs,
16 v.

17 UNITED STATES FOOD AND DRUG
18 ADMINISTRATION, et al.

19 Defendants,

20 STATE OF IDAHO; STATE OF
21 IOWA; STATE OF MONTANA;
22 STATE OF NEBRASKA; STATE OF
23 SOUTH CAROLINA; STATE OF
24 TEXAS; STATE OF UTAH,

Plaintiffs-Intervenors,

Case No. 1:23-cv-03026

MOTION TO INTERVENE

1 Pursuant to Federal Rule of Civil Procedure 24(a), Plaintiffs State
2 of Idaho, State of Iowa, State of Montana, State of Nebraska, State of
3 South Carolina, State of Texas, and State of Utah (the “State Interve-
4 nors”) respectfully move the Court for an order permitting them to inter-
5 vene as a matter of right in the above-captioned matter as plaintiffs. The
6 State Intervenor’s proposed Complaint is attached to this motion. *See Ex-*
7 *hibit 1.* Alternatively, State Intervenor’s move for permissive intervention
8 pursuant to Federal Rule of Civil Procedure 24(b).
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11 ARGUMENT

12 Rule 24(a)(2) provides a nonparty the right to intervene when it “(i)
13 timely moves to intervene; (ii) has a significantly protectable interest re-
14 lated to the subject of the action; (iii) may have that interest impaired by
15 the disposition of the action; and (iv) will not be adequately represented
16 by existing parties.” *Western Watersheds Project v. Haaland*, 22 F.4th
17 828, 835 (9th Cir. 2022) (citation omitted). The State Intervenor’s bear
18 the burden of showing that these four elements are met, but the Ninth
19 Circuit has instructed courts to “interpret these requirements broadly in
20 favor of intervention.” *Id.* (citation omitted). Additionally, this Court’s re-
21 view should be “guided primarily by practical considerations, not tech-
22 nical distinctions.” *Citizens for Balanced Use v. Mont. Wilderness Ass’n*,
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1 647 F.3d 893, 897 (9th Cir. 2011) (citation omitted). The State Interve-
2 nors easily satisfy each of the four requirements.

3 ***Timeliness.*** The State Intervenor bring this motion just five
4 weeks after this case was commenced. Defendants have not answered the
5 Amended Complaint. And the Court has not even issued a scheduling
6 order in the case. *Kachess Cmty. Ass’n v. U.S. Dep’t of Interior*, 2019 WL
7 10744937, at *1 (E.D. Wash. Dec. 11, 2019) (holding that intervention
8 motion filed before scheduling order was issued was timely and at an
9 “early stage of the case”). This case is just getting started, and no party
10 will suffer prejudice from the grant of intervention. Nor will intervention
11 cause any disruption or delay in the proceedings. The Ninth Circuit has
12 found that far greater delays still satisfied the timeliness requirement.
13 *See, e.g., Mont. Wilderness Ass’n*, 647 F.3d at 897 (finding motion was
14 timely when it was brought “less than three months after the complaint
15 was filed and less than two weeks after the Forest Service filed its answer
16 to the complaint”); *Idaho Farm Bureau Fed’n v. Babbitt*, 58 F.3d 1392,
17 1397 (9th Cir. 1995) (noting that motion to intervene was filed “at a very
18 early stage” even where intervenor waited four months after complaint
19 was filed).
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1 **Protectable Interest.** As detailed in their Complaint, *see* Exhibit
2 1, the State Intervenorors have significantly protectable interests related
3 to the FDA’s decision to modify mifepristone’s REMS. The FDA’s action
4 harms the State Intervenorors’ sovereign and quasi-sovereign interests. As
5 alleged in the Complaint, eliminating mifepristone’s in-person dispens-
6 ing requirement will harm women residents of the State Intervenorors. The
7 Supreme Court has long recognized that “a State has a quasi-sovereign
8 interest in the health and well-being—both physical and economic—of its
9 residents in general.” *Alfred L. Snapp Son, Inc. v. Puerto Rico ex rel.*
10 *Pedro Barez*, 458 U.S. 592, 607 (1982). The FDA’s action jeopardizes those
11 quasi-sovereign interests, and the State Intervenorors seek to protect them
12 by intervening here. It also undermines the State Intervenorors’ ability to
13 enforce their laws, which is another classic protectable state interest. *Id.*
14 at 601 (identifying the “power to create and enforce a legal code” as an
15 important state interest).

16
17 As a practical matter—which is Rule 24’s guiding star—the State
18 Intervenorors’ interests are strong proof that they should be part of this
19 litigation. *See United States v. City of Los Angeles*, 288 F.3d 391, 398 (9th
20 Cir. 2002). The “interest” analysis is a practical guide that “directs
21 courts” involve “as many apparently concerned persons as is compatible
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1 with efficiency and due process.” *Id.* Permitting intervention here allows
2 efficient resolution of a common concern with the FDA’s action.

3 Finally, because the FDA’s action violates the Administrative Pro-
4 cedure Act, the State Intervenor’s interests are legally protected and can
5 be remedied by the claims they assert. *See Mont. Wilderness Ass’n*, 647
6 F.3d at 897.

7
8 ***Impairment of Interest.*** Once an intervenor has shown that it has
9 a significant protectable interest, courts will “have little difficulty con-
10 cluding that the disposition of this case may, as a practical matter, affect
11 it.” *California ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir.
12 2006). Here, that is clearly the case. The existing Plaintiffs are seeking
13 to eliminate mifepristone’s REMS altogether. The State Intervenor’s are
14 seeking to restore and strengthen mifepristone’s REMS. If the existing
15 Plaintiffs prevail, the State Intervenor’s interests will be impaired. Put
16 another way, “[t]he same evidence that bolsters the [existing Plaintiffs’]
17 standing to sue also bolsters the case for intervention.” *Id.*

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20 ***Inadequate Representation.*** The State Intervenor’s interests are
21 not, and will not, be adequately represented by the existing parties. “The
22 most important factor in determining the adequacy of representation is
23 how the interest compares with the interests of existing parties.” *Arakaki*
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1 *v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003), as amended (May 13,
2 2003) (citation omitted). The existing Plaintiffs’ interests do not align
3 with the State Intervenors’ interests. That much is plain from the face of
4 the Amended Complaint and the State Intervenors’ Complaint.
5

6 None of the existing parties “will undoubtedly” make all of the State
7 Intervenors’ arguments. *See California v. Tahoe Reg’l Plan. Agency*, 792
8 F.2d 775, 778 (9th Cir. 1986). The FDA believes its action was lawful, and
9 the existing Plaintiffs want to wholly eliminate mifepristone’s REMS, not
10 restore the in-person dispensing requirement.
11

12 The State Intervenors’ burden here is “minimal.” *Arakaki*, 324 F.3d
13 at 1086. They’ve more than carried it, and intervention should be granted
14 as of right.
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17 Rule 24(b) also provides the State Intervenors with a path to inter-
18 vention. All the Ninth Circuit requires for permissive intervention is “(1)
19 an independent ground for jurisdiction; (2) a timely motion; and (3) a
20 common question of law and fact between the movant’s claim or defense
21 and the main action.” *Freedom from Religion Found., Inc. v. Geithner*,
22 644 F.3d 836, 843 (9th Cir. 2011) (citation omitted). Each of these
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grounds is satisfied here. In federal-question cases, like this one, the jurisdictional requirement is only relevant “where a proposed intervenor seeks to bring new state-law claims.” *Id.* That’s not at issue here. As discussed above, the motion is timely. And the State Intervenor’s APA claims are grounded in the same facts and the same laws as the existing Plaintiffs’ action.

Permissive intervention is thus also well supported.

CONCLUSION

For the foregoing reasons, the State Intervenor respectfully request the Court to grant their motion to intervene.

Dated: March 30, 2023

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CERTIFICATE OF SERVICE

I hereby certify that, on March 30, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Lincoln Davis Wilson
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